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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Services Inside Wiring	)	**CS Docket No. 95-184**
	)	
Customer Premises Equipment	)	
	)	
In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	**MM Docket No. 92-260**
	)	
Cable Home Wiring	)	

COMMENTS OF LEACO RURAL TELEPHONE COOPERATIVE, INC.

Leaco Rural Telephone Cooperative, Inc. ("Leaco"), by its attorneys, submits these Comments in response to the Further Notice of Proposed Rulemaking ("*FNPRM*") adopted by the Federal Communications Commission ("FCC" or "Commission") on August 27, 1997 (FCC 97-304) in the above-captioned matter. Leaco generally confines its Comments to the Commission's proposal to afford owners of multiple dwelling unit buildings ("MDUs") the choice of whether to use a "building-by-building" or "unit-by-unit" approach to the disposition of cable "home run wiring" within MDUs.

Statement of Interest

Leaco is a licensed provider of wireless cable service in the Hobbs, New Mexico Basic Trading Area. As a competitor to incumbent cable operators, Leaco has experienced tremendous

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difficulty obtaining access to potential customers residing in MDUs. Accordingly, Leaco will be directly affected by any rules adopted by the FCC concerning the disposition of inside wiring in MDUs.

Comments

As the Commission is well aware, there is tremendous consumer frustration with the rates charged and services provided by incumbent cable operators. The method that both Congress and the FCC have selected to address this basic problem is to craft regulations that, rather than restrict the activities of incumbent operators, instead facilitate the development of competition in the multichannel video programming distribution ("MVPD") marketplace. In the *FNPRM*, the Commission seeks to "effectively promote competition and consumer choice." *FNPRM* at Paragraph 2. Unfortunately, the proposals contained therein fail to effectively promote such competition.

While the Commission may intend to facilitate the ability of MVPD providers to compete for customers residing in MDUs, both the "building-by-building" and "unit-by-unit" proposals set forth in the *FNPRM* leave the control of access to the home run wiring (and, therefore, access to the customer) in the hands of the MDU owner. Under either approach, it is the MDU owner that decides whether there will be competition. The procedures set forth in the *FNPRM* for allowing access to the home run wiring to the MVPD provider are only triggered by a decision of the MDU owner to either (a) choose a new MVPD provider for the building, or (b) allow each unit to choose a new MVPD provider for their respective unit. If the MDU owner decides not to change providers or allow its residents to have the option to do so, competing MVPD providers are effectively foreclosed from the ability to provide service to dwellers in that MDU.[1] Such a result is inconsistent with the procompetitive goal of both the *FNPRM* and the Commission's MVPD regulatory scheme.

As an alternative to the Commission's proposal, Leaco proposes that the Commission *require* MDU owners to allow subscription on a unit-by-unit basis, using the procedural framework set forth in the *FNPRM*. By requiring MDU owners to afford units the choice of MVPD provider[2], rather than allowing the MDU owner to choose whether to allow units that choice as proposed in the *FNPRM*, the Commission will ensure true MVPD competition in the MDU environment.[3]

While Leaco generally supports the proposed procedures for disposition of the home run

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[1] Competing providers may always choose to install their own home run wiring; however, such installation is disruptive to MDU dwellers and expensive. In Leaco's experience, the prospect of having to install its own wiring to serve individual units in an MDU has deterred Leaco from providing service to customers who have requested it. This "chilling effect" effectively acts as a bar to competition.

[2] Leaco does not propose that an MDU owner be required to allow this choice where the incumbent provider has an enforceable legal right to remain on the premises against the will of the MDU owner. In addition, the unit-by-unit approach would be limited to home run wiring, since such an approach would be incompatible with buildings with "loop-through" wiring.

[3] Leaco recognizes that certain MDUs, specifically those with extremely transient residents (*i.e.*, hospitals, hotels) may require different regulatory treatment. For such buildings, the unit-by-unit approach may simply not be practical. However, for all MDUs with longer term residents such as apartment buildings, condominiums, nursing homes and dormitories), affording unit dwellers the choice of MVPD is not only feasible, it is essential to the achievement of true MVPD competition.

wiring that would apply once individual units are afforded the choice of MVPD provider, Leaco opposes the Commission's proposal to allow an incumbent provider seven days after being notified by a customer that the customer wants to change to a new provider to choose whether to remove or abandon its home run wiring. In practice, this seven day period simply affords the incumbent provider a week long window to bombard the customer with a marketing campaign to convince the customer to switch back to the incumbent. In addition, the required delay in installation by the competing MVPD makes the competing MVPD look unresponsive, thereby hindering its efforts to compete in the marketplace.

As an alternative to the proposed approach, Leaco suggests that the Commission adopt procedures whereby the wiring is depreciated at an accelerated rate, such that, after three years, the incumbent has extracted the full value of the wiring and, therefore, there remains no legitimate reason to remove the wiring which has essentially become a fixture. Should the Commission reject this alternative, Leaco urges the Commission to reduce the seven day period for an incumbent's decision to two business days. In the vast majority of cases, the incumbent is going to simply abandon the wiring. Two days is more than sufficient to make such a decision. If the incumbent does elect to remove the wiring, Leaco would not oppose allowing the incumbent five days from that point to remove the wiring, therefore giving the incumbent a total of seven days as currently proposed.

WHEREFORE, in consideration of the foregoing, Leaco respectfully requests that the Commission act in a manner consistent with the views expressed herein.

Respectfully submitted,

LEACO RURAL TELEPHONE COOPERATIVE, INC.

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